

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: _____

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL
ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable, states should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

Providers participating in the Medicaid Program must comply with the following provisions unless the provider cannot, as a matter of conscience, implement such advance directives.

STATEMENT OF ILLINOIS LAW ON ADVANCE DIRECTIVES

This statement of Illinois law on advance directives has been written in fulfillment of the Omnibus Budget Reconciliation Act of 1990 (OBRA'90) requirement that the State prepare such a statement to be distributed by providers.

I. Introduction

Competent adults have the right to make decisions regarding their health care. The courts of this State have recognized that this right should not be lost when a person becomes unable to make his or her own decisions. Therefore, people have the right to accept or refuse any medical treatment, including life sustaining treatment. In order to enable them to make these decisions, patients have the right to be adequately informed about their medical condition, treatment alternatives, likely risks and benefits of each alternative and possible consequences.

OFFICIAL

TN # 91-24 APPROVAL DATE 1-29-92 EFFECTIVE DATE 12-1-91

SUPERCEDES
TN # NAW

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: _____

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The law now requires that patients be informed of the advance directives available to help assure that their wishes are carried out even if they are no longer capable of making or communicating their decisions. This document describes the advance directives that are recognized in Illinois. It should be kept in mind that every patient has the right to choose whether or not he or she wants to execute an advance directive.

II. Powers of Attorney for Health Care

A Power of Attorney is a document that permits a person, called the principal, to delegate to another person, called the agent, the power to make any health care decision the principal could make.

The scope of the power given to the agent may be as broad or narrow as the principal wishes. The standard form grants the agent broad medical decision-making power which the principal may limit. The law does not, however, require that this particular form be used.

The agency relationship created by the Power of Attorney also protects the rights of third parties should the principal become incompetent. The agent, who can be anyone other than the principal's physician or health care provider, will have final decision-making authority, even more than a court appointed guardian would have. However, a court may step in when it is shown that an agent is not acting for the benefit of the principal in accordance with the terms of the Power of Attorney.

OFFICIAL

TN # 91-24 APPROVAL DATE 1-29-92 EFFECTIVE DATE 12-1-91

SUPERCEDES
TN # NEW

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: _____

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The agent cannot accept payment. Successor agents may be appointed if the named agent cannot or will not serve. The principal and agent must inform the physician of the agency relationship. Although under no duty to act, an agent must keep a record of all actions taken under his or her power. An agency may be revoked by the principal at any time, orally or in writing. However, modifications may only be made in writing.

III. Living Wills

The Living Will is a document that allows patients to describe their wishes about the discontinuance of death delaying procedures when they become terminally ill. Because a Living Will is a statutory creation, the law must be followed carefully for it to be effective. The Living Will Act provides a form, but does not require the use of that particular form. A Living Will may be made by any person who is able to make his or her own decisions and who is at least 18 years old, but it will not go into effect until the person who makes it is in a terminal condition. A terminal condition is defined as "an incurable and irreversible condition which is such that death is imminent and the application of death delaying procedures serves only to prolong the dying process."

Once the patient has a terminal condition, the Living Will can say that no "death delaying procedures" should be used. Such procedures are those which "serve only to postpone the moment of death." Procedures to ease pain and the withdrawal of artificial food and water if death would result from this withdrawal and not from the existing terminal condition are not considered "death delaying procedures".

OFFICIAL

TN # 91-24 APPROVAL DATE 1-29-92 EFFECTIVE DATE 12-1-91

SUPERCEDES
TN # New

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: _____

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

Under the Act, the patient must inform the physician of the existence of a Living Will. If the physician does not wish to comply with the provisions of the Will, he must tell the patient who may then transfer to another physician. The patient may revoke the Living Will by destroying it, or indicating orally or in writing that he wishes to revoke the Will. If the patient is pregnant and death delaying procedures would allow the baby to develop to the point of live birth, the Living Will cannot take effect.

If a patient has both a Living Will and an agent with Power of Attorney for Health Care, then the Living Will does not take effect unless the agent is not available.

IV. Do-Not-Resuscitate Orders

"Do not resuscitate" (DNR) or "no-code" orders are doctors' orders which tell nursing and hospital staff that, if a patient suffers a cardiopulmonary arrest (heart attack), the patient does not have to be revived. Good medical practice and the policies of most facilities require that CPR (cardiopulmonary resuscitation) be started unless there is an order to the contrary in the patient's chart.

DNR orders are consistent with the other advance directives discussed here, but are not substitutes for these.

TN # 91-24

APPROVAL DATE 1-29-92 EFFECTIVE DATE 12-1-91

SUPERCEDES
TN # NEW

OPTIONAL

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: _____

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

V. In the Absence of Advance Directives...

This Statement describes some of the ways you can ensure that your medical treatment will be handled according to your wishes even if you are no longer able to communicate your desires. If you have not executed an advance directive, decisions regarding your health care will have to be made by someone else (who might not be the person you would have chosen) and may place additional burdens on your family or physician. If you suffer from a terminal condition, permanent unconsciousness or an incurable or irreversible condition and lack the ability to make decisions, a health care surrogate may be chosen to make life sustaining decisions for you. The surrogate who would act in such a case would be (in order of priority): guardian of the person, spouse, any adult children, either parent, any adult brother or sister, any adult grandchildren, a close friend, or guardian of the estate. Under other circumstances, legal action may be required to have decisions made on your behalf.

OFFICIAL

TN # 91-24 APPROVAL DATE 1-27-92 EFFECTIVE DATE 12-1-91

SUPERCEDES

TN # NEW